IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.2497 OF 2007

Smt.Suman V. Nehatrao ....Petitioner
V/s.
The State of Maharashtra & Ors. ....Respondents

Mr.Y.S. Jahagidar, Senior Counsel with Mr.S.S. Aradhye for the Petitioner.

Mr.P.M. Patil, AGP for the Respondents.

CORAM : F.I. REBELLO &
R.M. SAVANT, JJ.
DATED : 18TH APRIL, 2007.

ORAL ORDER : (PER R.M. SAVANT, J.)

1. Rule, with the consent of the parties made returnable forthwith and heard.

2. By this Petition filed under Article 226 of the Constitution of India, the Petitioner impugns the order of the Caste Scrutiny Committee dated 30.3.2007 by which order the Committee has invalidated the claim of the Petitioner as belonging to Mahadeo Koli, Scheduled Tribe.

3. Such of the facts which are necessary to be cited are stated thus :-

. The Petitioner was born on 1.6.1949 and her maiden name was Suman Dattatraya Kamble. The Petitioner was granted caste certificate by the Tahsildar and Executive Magistrate, Solapur on 5.2.1981 as belonging to Mahadeo Koli, Scheduled Tribe. The Petitioner contested for a seat in Zilla Parishad, Solapur from the open category and was declared elected on 12.3.2007. The Petitioner thereafter contested the post of President, Solapur Zilla Parishad, which was reserved for Scheduled Tribe (women). The Petitioner was elected to the post of President of the Zilla Parishad, Solapur on 21.3.2007.

4. The process of validation of the Petitioner's caste certificate as belonging to Mahadeo Koli, Scheduled Tribe had commenced and as per the procedure, the report of the Vigilance Cell was served upon the Petitioner on 3.2.2007. The Petitioner submitted her say to the Vigilance Cell on 20.2.2007. The Committee thereafter proceeded to hear the Petitioner and by its impugned order dated 30.3.2007 invalidated the caste claim of the Petitioner as belonging to Mahadeo Koli, Scheduled Tribe.

5. The Petitioner had produced a host of

documents which are reproduced in the order of the Scrutiny Committee. The Vigilance Cell had also conducted the school and home enquiry, in respect of one Kashinath Dattu Kamble, the Vigilance Officer has reported that the word "M" appearing in his caste entry was written in different ink and in different hand writing in between the word Hindu and Koli. Similarly in the case of Shiva Dattu Kamble, who is also the brother of the Petitioner the word "Mahadeo" is written in bracket in different ink and in different hand writing. The Enquiry Officer had also obtained the document relating to the Petitioner’s grand-father, dating back to 1932 wherein the Petitioner’s grand-father caste was recorded as Koli. The Enquiry Officer also obtained an abstract of the death register in respect of the Petitioner’s blood relations from the paternal side namely of Pandu Abaji Pulankar, grand-father of the Petitioner against whose name the caste entry is Koli as also in respect of Chababai Bap Babu Pandharinath Kambale cousin sister of the Petitioner in respect of whom the caste entry was also Koli. After following the procedure, the Scrutiny Committee considered the documents produced by the Petitioner in respect of the near relations, the Committee came to the conclusion that the documents relating to the primary school, in respect

of the Petitioner's near relations, the record discloses the caste entry as Koli, whereas the documents relating to the High School, the record discloses the caste entry as Mahadeo Koli. The Committee thereafter came to a conclusion that the High School record is manipulated with an ill-intention to grab the concessions and facilities meant for genuine Scheduled Tribes. The Committee therefore, discarded the said record. The Committee on the basis of the records pertaining to the Petitioner, her father and elderly paternal blood relations showing the caste recorded as Koli came to a conclusion that the Petitioner's claim as belonging to Mahadeo Koli, Scheduled Tribe cannot be sustained.

6. Amongst the documents produced by the Petitioner, the Petitioner had produced the affidavits of one Ulhas and Laxmikant Madhukar Kambale, who are the sons of the Petitioner's brother. The said Ulhas and Laxmikant Madhukar Kambale have been issued the caste validity certificate by the Scrutiny Committee, Pune. It appears that the tribe claim of the said Ulhas and Laxmikant Madhukar Kambale were initially invalidated by the Committee. Against the said decision of the Committee, the said Ulhas and Laxmikant Madhukar Kambale had filed Writ Petitions in

this Court in which they had produced the school record pertaining to one Vasant Shrirang Kambale, showing his caste record as Hindu Mahadeo Koli. It was the case of the said Ulhas and Laxmikant Madhukar Kamble that the said Vasant Shrirang Kambale was their elder uncle. According to them the school record being old carried high probative value. The said case of Ulhas and Laxmikant Madhukar Kambale was accepted by this Court and accordingly, directions were issued to issue them the validity certificates. However, in respect of the said evidence produced by the Petitioner, the Committee on the basis of the Vigilance Cell enquiry and also from the family tree submitted by the Petitioner, came to a conclusion that the said Vasant Shrirang Kambale is not at all paternal blood relative of the Applicant as his name does not appear in the genealogy submitted by the Petitioner before the Vigilance Cell and hence the validity certificates issued to Ulhas and Laxmikant Madhukar Kambale would be of no consequence in the matter of considering the tribe claim of the Petitioner.

7. In so far as the said genealogy is concerned, it is submitted by Mr.Jahagirdar, the learned Senior Counsel appearing for the Petitioner that one branch

of Tukaram was inadvertently not shown in the genealogy produced by the Petitioner earlier. Mr.Jahagirdar has tendered before us a genealogy wherein the name of Vasant appears in the branch of Tukaram. The learned Senior Counsel further submitted that the request was made to the Committee to allow the Petitioner to produce the said genealogy, but the same was turned down. Since the said genealogy would have vital bearing on the tribe claim of the Petitioner, as the Petitioner seeks to rely upon the said caste validity certificates issued to Ulhas and Laxmikant Madhukar Kambale as per the directions of this Court, we are of the view that the matter requires to be relegated back to the Scrutiny Committee on the said count so far as to permit the Petitioner to substantiate her case on the basis of the caste validity certificates issued to Ulhas and Laxmikant Madhukar Kambale. On such remand, the Petitioner would be entitled to submit a fresh genealogy from her paternal side so as to substantiate her claim.

8. The issue of affinity, in our view has also not been properly dealt with by the Committee. The Committee has very brusquely stated in its order that the information given by the petitioner about the

traits, characteristics, customs and tradition in the Sunawani Patrak as well as the oral information given by the Petitioner at the time of hearing, the Petitioner has failed to prove the affinity to Mahadeo Koli, Scheduled Tribe. In our view, the Committee should have dealt with the said issue more elaborately more so in view of the fact that the said test is also crucial to an Applicant proving his tribe claim.

9. In that view of the matter, the Petition would have to be allowed and the order dated 30.3.2007 passed by Respondent No.2 - Committee would have to be set-aside and the matter would have to be relegated back to the Scrutiny Committee for a decision afresh in accordance with law and uninfluenced by the observations made in this order. On such remand, the Scrutiny Committee to decide the matter within two months from date.

10. Since the Petitioner had contested as a councillor in the Zilla Parishad Elections to a seat meant for open category, invalidation of the caste certificate of the Petitioner would have therefore no consequence in so far as continuance of the Petitioner as a councillor is concerned, however we make it clear that continuance of the Petitioner as a President

would depend upon the out come of the enquiry of the Caste Scrutiny Committee, as directed hereinabove.

(R.M. SAVANT, J.) (F.I. REBELLO, J.)